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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CITY OF SAN JOSE,

Plaintiff,

v.

SAN JOSE POLICE OFFICERS'
ASSOCIATION; SAN JOSE
FIREFIGHTERS; I.A.F.F., LOCAL
230; MUNICIPAL EMPLOYEES'
FEDERATION, AFSCME,
LOCAL 101; CITY
ASSOCIATION OF
MANAGEMENT PERSONNEL,
IFPTE, LOCAL 21, THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL NO. 3; and DOES 1-10,

Defendants.

No. C12-02904 LHK PSG

**DEFENDANT SAN JOSE POLICE
OFFICERS' ASSOCIATION'S NOTICE OF
MOTION AND MOTION FOR ATTORNEY
FEES; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**[DECLARATIONS OF GREGG A. ADAM,
GONZALO C. MARTINEZ, AND AMBER L.
WEST CONCURRENTLY FILED]**

Date: September 12, 2013
Time: 1:30 p.m.
Place: Dept. 8
Judge: Hon. Lucy H. Koh

NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 12, 2013 at 1:30 p.m. or as soon thereafter as the matter may be heard in the courtroom of the Honorable Lucy H. Koh, located at 280 South 1st Street, Courtroom 8, 4th Floor, San Jose, CA 95113, Defendant San Jose Police Officers' Association ("SJPOA") will and hereby does move this Court for an Order granting SJPOA its reasonable attorney fees incurred to defend against this action filed by Plaintiff the City of San Jose. This motion is brought pursuant to California Code of Civil Procedure 1021.5, and is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, Declaration of Gregg McLean Adam, the pleadings and papers filed herein, and upon such other matters as may be presented to the Court at the time of hearing.

Dated: March 11, 2013

CARROLL, BURDICK & McDONOUGH
LLP

By / s / Gregg McLean Adam
Gregg McLean Adam
Attorneys for Defendant
San Jose Police Officers' Association

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The day of the June 2012 primary election, the City of San Jose filed a complaint in this Court against five unions¹ that represent its employees asking for an advisory opinion that Measure B, a pension “reform” ballot measure it put before the San Jose voters, was lawful under federal and state law. The City raced to the federal court house to file its premature action—even though Measure B had not yet been enacted by the voters and was *not* the law of San Jose—in an improper attempt to deny the unions a state court forum for their anticipated complaints filed the day *after* Measure B was enacted. Indeed, the City amended its complaint to include allegations parroting those of the unions’ state court complaints.

At great expense, defendant San Jose Police Officers’ Association vigorously opposed the City’s action and filed a motion to dismiss because the First Amended Complaint (“FAC”) failed on *all* three prongs of Article III subject matter jurisdiction, *i.e.*, ripeness, standing, and advisory opinion. SJPOA further sought dismissal or a stay based on three separate federal abstention principles due to California’s great state interest in deciding the legality of Measure B in the first instance because it impacted state-law-based vested pension rights. The research and briefing was complex and, further, required coordination among defendants. After all the briefing was complete and the parties had begun preparation for argument, the City voluntarily dismissed its lawsuit three days before the hearing.

SJPOA is entitled to its reasonable attorney fees incurred in defending against the City’s lawsuit under California’s private attorney general doctrine because it satisfied its litigation objective of having the City’s federal action dismissed, it conferred a benefit on all San Jose city employees affected by

¹ Defendants are the San Jose Police Officers’ Association, the City Association of Management Personnel, IFPTE, Local 21; Municipal Employees’ Federation, AFSCME, Local 101; and San Jose Firefighters, I.A.F.F. Local 230.

1 Measure B because their rights will be determined in state court, and because the
 2 necessity and financial burden of defending against the City's lawsuit favors
 3 recovery of fees.

4 **II. RELEVANT FACTS AND PROCEDURAL BACKGROUND**

5 The City filed its complaint on June 6, 2012, asking for an advisory
 6 opinion that Measure B was lawful under federal and state law. Dkt. 1. On its face,
 7 Measure B affected all San Jose city employees, even though the City did not sue all
 8 the unions that represent the employees, or all the employees. *Id.*; Adam Decl. ¶ 6.

9 The City waited more than a month before serving its complaint on the
 10 union defendants. *See* Dkt. 2, 36. It filed a First Amended Complaint ("FAC") on
 11 July 3, 2012 (Dkt. 33), substantially parroting the allegations in the unions' state
 12 law complaints filed the day after Measure B was enacted. *E.g.*, Dkt. 60 at 5-6.
 13 Specifically, the FAC asked for a judgment that Measure B did not violate the
 14 following state and federal laws:

15 the contracts clause* of the United States Constitution, Article I,
 16 § 10; the contracts clause of the California constitution, Article I,
 17 § 9; the takings clause of the 5th amendment to the United States
 18 constitution; the takings clause of the California constitution,
 19 Article I, 19; the federal due process guarantees of the 5th and
 20 14th amendments to the United States constitution; state due
 21 process guarantees of the California constitution, Article I,
 22 section 7; the right to petition government under the federal and
 23 state constitutions; separation of powers under the California
 24 constitution, Article III, section 3; breach of contract; . . . the
 25 Meyers-Milias-Brown Act, [California] Government Code
 26 section 3500 et seq.; promissory estoppel; and violation of the
 27 California Pension Protection Act, [California] constitution,
 28 Article XVI, section 17.

29 *See* FAC ¶ 31.

30 SJPOA filed a motion to dismiss² the FAC on Article III justiciability
 31 grounds, arguing that (1) the City's action was unripe because it was filed *before*

32 ² San Jose Firefighters filed the initial motion to dismiss. Subsequently, AFSME
 33 also filed its own motion to dismiss. Per Court order, all the motions were
 34 consolidated for briefing. *See* Dkt. 54.

1 Measure B was even enacted and because the City pled Measure B required
2 implementing ordinances; (2) the City's action at its core asked for an advisory
3 opinion that Measure B is constitutional in all applications; and (3) the City lacked
4 standing because it did not allege any injury, let alone injury traceable to the
5 unions' conduct. Alternatively, it asked for a stay or dismissal based on three
6 separate federal abstention principles (*i.e.*, *Brillhart* abstention, *Younger* abstention,
7 and *Pullman* abstention) because California had a strong state interest in deciding
8 the legality of Measure B since it attacked state-law-based vested pension rights.
9 *See* Dkt. 41 at 1-2.

10 The City opposed, conceding that it brought its action prematurely but
11 nevertheless pressing forward with its claims. *See* Dkt. 60; Dkt. 72 at 4:18-19.
12 Despite its stipulation asking the Court to "rule as soon as practicable after the
13 October 4[, 2012] hearing on the motions" (Dkt. 54 at ¶ 5), the City sought to delay
14 the October 4 hearing and asked SJPOA to agree to continue the hearing,
15 purportedly so the City could prepare to bring its claims in the pending state court
16 action. Adam Decl. ¶ 9. Because the City's asserted claims were meritless, and
17 because it desired a hearing on the motion to dismiss as soon as possible, SJPOA
18 declined. *Id.*

19 SJPOA and the other union defendants filed a consolidated reply brief
20 pursuant to stipulation, on which SJPOA took the lead. *See* Dkt. 72; Adam Decl.
21 ¶ 10. That reply explained why the City still failed to satisfy its burden of showing
22 subject matter jurisdiction existed and why abstention was inappropriate. *Id.* at 1-3
23 and *generally*.

24 The matter was set for hearing before this Court on October 4. *See* Dkt.
25 Even though the City knew the unions desired a timely hearing and had already
26 declined to continue the matter because they desired resolution of the City's claims,
27 the City submitted a letter to this Court obliquely asking it to continue the October 4
28

1 hearing. *See* Dkt. 76 at 2.³ That letter implicitly acknowledged the complexity of
 2 the underlying motions to dismiss. *See id.* This Court declined the City's request
 3 and issued an order stating that: "The Court will proceed with the October 4, 2012
 4 hearing on Defendants' three pending motions to dismiss . . . unless by Monday,
 5 October 1, 2012, the parties stipulate to a stay of this case pending the Superior
 6 Court's resolution of the state law claims in this case or the City of San Jose
 7 dismisses this case pursuant to Federal Rule of Civil Procedure 41." *See* Dkt. 79
 8 (9/28/12 Order at 1.) No agreement to stay was reached. Adam Decl. ¶ 11.

9 Three days before the hearing on the motions to dismiss, the City
 10 voluntarily dismissed its complaint against SJPOA and AFSCME. Dkt. 80.⁴ It then
 11 refiled in state court. Adam Decl. ¶ 12. Further, as detailed in the Adam and West
 12 Declarations, the parties have met and conferred about this motion. Adam Decl.
 13 ¶¶ 13-14; West Decl. ¶ 8.

14 **III. SJPOA IS ENTITLED TO REASONABLE ATTORNEY FEES UNDER** 15 **CALIFORNIA'S PRIVATE ATTORNEY GENERAL STATUTE**

16 **A. California's Private Attorney General Statute**

17 California Code of Civil Procedure § 1021.5 provides, in relevant part:
 18 "Upon motion, a court may award attorneys' fees to a successful party against one
 19 or more opposing parties in any action which has resulted in the enforcement of an
 20 important right affecting the public interest if: (a) a significant benefit, whether
 21 pecuniary or nonpecuniary, has been conferred on the general public or a large class
 22 of persons, (b) the necessity and financial burden of private enforcement, or of
 23 enforcement by one public entity against another public entity, are such as to make
 24 the award appropriate, and (c) such fees should not in the interest of justice be paid
 25

26 ³ Defendant AFSCME filed a letter objecting to the City's request. *See* Dkt. 77.

27 ⁴ Because the other union defendants had answered the City's complaint, the City
 28 filed a motion to dismiss those defendants, and later, pursuant to court order, a
 stipulation dismissing them. *See* Dkt. 82-83, 89-90.

1 out of the recovery, if any.” These statutory factors are interrelated. *See Press v.*
 2 *Lucky Stores, Inc.*, 34 Cal.3d 311, 319 (1983).

3 The California Supreme Court has noted approvingly that under the
 4 statute “attorney fees have been awarded to those defending against suits by public
 5 entities.” *In re Adoption of Joshua S.*, 42 Cal.4th 945, 957 (2008). The reason for
 6 that is that “[w]hen a party initiates litigation that is determined to detrimental to
 7 the public interest, attorney fees” may properly be imposed. *Id.* The Ninth Circuit
 8 has held that section 1021.5 applies in federal courts. *See City of Carmel-By-The-*
 9 *Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1167-1168 (9th Cir. 1997).

10 **B. SJPOA Is Entitled to Fees Because It Was the Successful Party,**
 11 **It Enforced Important Rights Which Benefited All San Jose**
 12 **City Employees, and Because the Necessity and Financial**
 13 **Burden of Defending Against the City’s Litigation Militates in**
 14 **Its Favor**

15 SJPOA meets all of section 1021.5’s requisites and is entitled to attorney
 16 fees under the private attorney general doctrine.

17 **1. SJPOA Is the Prevailing Party Because It Achieved Its**
 18 **Litigation Objectives When the City Voluntarily**
 19 **Dismissed**

20 For purposes of section 1021.5, “[t]he term ‘successful party’ . . . means
 21 the party to litigation that achieves its objectives.” *Graham v. DaimlerChrysler*
 22 *Corp.*, 34 Cal.4th 553, 571 (2004). Accordingly, because “[a] lawsuit’s ultimate
 23 purpose is to achieve actual *relief from an opponent* . . . if a party reaches the
 24 ‘sought-after destination,’ then the party ‘prevails’ regardless of the ‘route taken.’”
 25 *Ibid.* That means that a defendant is the “successful party” even when the plaintiff
 26 voluntarily dismissed its lawsuit. *Id.* at 572 (“a defendant can be a prevailing or
 27 successful party after a plaintiff has voluntarily dismissed the case against it”).
 28 Whether the dismissal was with or without prejudice is irrelevant. *See, e.g., Wal-*
Mart v. City of San Marcos, 132 Cal.App.4th 614, 622 (2005) (awarding fees in
 case involving dismissal without prejudice on ripeness grounds; noting “[a]n award

1 is not barred when the case was won on a preliminary matter, the case settled or the
2 opposing party voluntarily withdrew its claim”).

3 SJPOA is the successful party for purposes of section 1021.5 because the
4 City’s voluntary dismissal of the FAC achieved the union’s litigation objectives of
5 (1) having the City’s federal lawsuit dismissed and (2) having the state court decide
6 the legality of Measure B. Courts have awarded section 1021.5 attorney fees in
7 similar circumstances. For example, in *Wal-Mart v. City of San Marcos*, the court
8 held that the individuals who defended against and obtained dismissal without
9 prejudice of a lawsuit brought by Wal-Mart were the “successful parties” under the
10 statute: “In bringing its petition [for writ of mandate], Wal-Mart sought to keep the
11 referendum off the ballot. In opposing the petition, on ripeness and other grounds,
12 Drake and Walton sought dismissal of the petition to allow a vote on the City’s
13 action to proceed, and that is precisely the relief they obtained.” 132 Cal.App.4th at
14 621. The same is true here. SJPOA moved to dismiss the City’s federal lawsuit to
15 have the state court decide the legality of Measure B, and when the City voluntarily
16 dismissed its lawsuit in the face of SJPOA’s motion to dismiss for lack of subject
17 matter jurisdiction, that is “precisely the relief [it] obtained.” *Id.* at 621.

18 **2. SJPOA Vindicated Important Rights Which**
19 **Significantly Benefited All San Jose City Employees**
20 **Affected by Measure B**

21 Whether a right vindicated is sufficiently important to justify a fee award
22 requires a court to “assess the litigation and determine, from a practical perspective,
23 whether or not the action served to vindicate an important right so as to justify an
24 attorney fee award under a private attorney general theory.” *Woodland Hills*
25 *Residents Assn., Inc. v. City Council*, 23 Cal.3d 917, 938 (1979); *Bartling v.*
26 *Glendale Adventist Med. Ctr.*, 184 Cal.App.3d 97, 103 (1986) (practical analysis
27 based on the facts of each case). “[T]he extent of the public benefit need not be
28 great to justify an attorney fee award.” *Center for Biological Diversity v. County of*
San Bernardino, 185 Cal.App.4th 866, 894 (2010). And the benefit obtained need

1 not be actual and concrete. *In re Adoption of Joshua S.*, 42 Cal.4th 945, 958 (2008)
2 (“section 1021.5 award[s] can involve rights or benefits that are somewhat
3 intangible, such as clarifying important constitutional principles”); *Braude v.*
4 *Automobile Club*, 178 Cal.App.3d 994, 1013 (1986) (concrete benefit not required
5 where benefits were doctrinal or conceptual in nature). Thus, vindication of public
6 policies “of [a] constitutional stature” satisfies the “important right” criteria. *See*
7 *Press*, 34 Cal.3d at 318 (“The determination that the public policy vindicated is one
8 of constitutional stature ... establishes the first of the ... elements requisite to the
9 award (i.e., the relative societal importance of the public policy vindicated”).

10 All these requirements are established here. The City’s dismissal
11 vindicated the two constitutionally-based principles SJPOA advanced in its motion,
12 and (at a minimum) conferred a significant benefit on all City employees affected
13 by Measure B.

14 First, SJPOA vindicated the right of all San Jose city employees’ to be
15 free from the City’s unripe action and an improper advisory opinion on a ballot
16 measure affecting their pension rights—*i.e.*, it enforced Article III justiciability
17 concerns. Stated another way, it vindicated the important principle that
18 municipalities are not entitled to prematurely sue their employees’ unions to obtain
19 a pre-enforcement advisory opinion on the constitutionality of their ordinances. *See*
20 *Joshua S.*, 42 Cal.4th at 957 (“When a party initiates litigation that is determined to
21 be detrimental to the public interest, attorney fees have been imposed”); *Wal-Mart*,
22 132 Cal.App.4th at 619-622 (affirming fees even though there was a dismissal
23 without prejudice on ripeness grounds, and no resolution of the underlying merits).
24 All union defendants and the employees they represent benefited from the dismissal
25 for this reason, but the value of that benefit also extends to those City employees
26 who were not in unions sued by the City. The reason for that is because the
27 advisory opinion the City sought may have bound all City employees, even if they
28 were not represented in the action.

1 Second, the City's dismissal vindicated the principle that California
 2 courts have a strong interest in deciding the legality of state laws such as Measure B
 3 in the first instance, particularly when state-based constitutionally vested pension
 4 rights are involved. As SJPOA argued in its motion to dismiss briefing, California
 5 has a strong interest in protecting public employees' vested pension rights. *See*
 6 Dkt. 72 at 17-19. The City's dismissal of the FAC furthered that public policy
 7 because its effect was that California state courts will adjudicate the legality of
 8 Measure B.

9 As the California Supreme Court has noted, vindication of
 10 constitutionally-based rights "would have little meaning . . . without some
 11 mechanism authorizing the award of attorneys fees." *See Press*, 34 Cal.3d at 318-
 12 319. That would have the effect of allowing "vital constitutional principles to
 13 become mere theoretical pronouncements of little practical value to ordinary
 14 citizens who cannot afford the price of vindicating those rights." *Id.* Moreover, an
 15 award of fees here would have the additional salutatory effect of discouraging
 16 similar pre-emptive lawsuits by other municipalities seeking advisory opinions
 17 regarding the legality of their measures.

18 **3. Private Defense Was Necessary Because the City Sued** 19 **the Unions**

20 The final prong of section 1021.5 is also met here. When a lawsuit is
 21 "brought by a public entity . . . the necessity of private rather than public
 22 enforcement [to defend against it] is evident." *County of San Luis Obispo v.*
 23 *Abalone Alliance*, 178 Cal.App.3d 848, 868 (1986). Further, "[t]he 'financial
 24 burden' criterion . . . is met when 'the cost of the claimant's legal victory
 25 transcends his personal interest, that is, when the necessity for pursuing the lawsuit
 26 placed a burden on the [claimant] 'out of proportion to his individual stake in the
 27 matter.'" *Id.* California courts recognize that public employee unions are entitled
 28 to section 1021.5 fees when the financial stake of individual union members is not

1 sufficiently great to justify the fees spent to defend against the government
 2 employer's suit. *See Los Angeles Police Protective League v. City of Los Angeles*,
 3 188 Cal.App.3d 1 (1986) (awarding fees for defending against city's appeal); *see*
 4 *also Bagget v. Gates*, 32 Cal.3d 128, 143 (1982) (affirming section 1021.5 fees
 5 where police officer's lawsuit enforced due process rights but might not have
 6 resulted in any pecuniary benefit to plaintiffs); *Citizens Against Rent Control v.*
 7 *City of Berkeley*, 181 Cal.App.3d 213, 231 (1986) (inquiry is whether plaintiffs
 8 "had an *individual stake* that was out of proportion to the costs of the litigation").⁵

9 SJPOA's motion to dismiss was legally complex and involved substantial
 10 research and briefing regarding all three prongs of Article III's justiciability
 11 requirements, as well three separate federal abstention doctrines. The City
 12 implicitly acknowledged the complexity involved in the motion in its letter to this
 13 Court. Moreover, as detailed in the Adam Declaration, the financial cost of seeking
 14 dismissal was out of proportion to any pecuniary benefit the union or its members
 15 could ever obtain in defending this lawsuit. *See Adam Decl.* ¶ 16. For that reason,
 16 the last prong of section 1021.5 militates in favor of awarding fees.

17 **IV. THE AMOUNT OF THE FEE AWARD SOUGHT IS REASONABLE AND SUPPORTED** 18 **BY THE EVIDENCE**

19 California courts generally apply the "lodestar" method – i.e., the number
 20 of hours reasonably expended multiplied by the reasonable hourly rate – in
 21 determining the amount of a fee award under section 1021.5. *Press v. Lucky Stores,*
 22 *Inc.*, 34 Cal.3d 311 (1983). "Reasonable hourly rate" is "that prevailing in the
 23 community for similar work." *PLCM Group Inc. v. Drexler*, 22 Cal.4th 1084, 1095
 24 (2000). Further, the lodestar figure may be adjusted, based on the particular
 25

26 ⁵ That SJPOA defended against the City's litigation to secure the pension rights of
 27 its members does not make section 1021.5 fees inappropriate. *See Citizens Against*
 28 *Rent Control*, 181 Cal.App.3d at 231 (rejecting as "untenable" city's argument that
 fees inappropriate because litigation "might someday help [claimants] further or
 secure their property interests[.]")

1 circumstances of the case, “to fix the fee at the fair market value for the legal
 2 services provided.” *Id.* Thus, the “trial court makes its determination after
 3 consideration of a number of factors, including the nature of the litigation, its
 4 difficulty, the amount involved, the skill required in its handling, the skill
 5 employed, the attention given, the success or failure, and other circumstances of the
 6 case.” *Id.* at 1096, citing *Melnyk v. Robledo*, 64 Cal.App.3d 618, 623-24 (1976).

7 These standards apply in federal court when section 1021.5 fees are
 8 sought. See *Mangold v. California Pub. Utilities Comm’n*, 67 F.3d 1470, 1478 (9th
 9 Cir. 1995) (“Existing Ninth Circuit precedent has applied state law in determining
 10 not only the right to fees, but also in the method of calculating the fees”).

11 **A. SJPOA’s Attorneys Worked a Reasonable Number of Hours on** 12 **This Matter**

13 Prevailing parties are entitled to compensation for “all the hours
 14 reasonably spent.” *Ketchum v. Moss*, 24 Cal.4th 1122, 1133 (2001). Here, the time
 15 records presented in the Declaration of Gonzalo Martinez support the number of
 16 hours SJPOA’s attorneys spent to dismiss the case from federal court. Martinez
 17 Decl. ¶¶ 12-17 & Ex. A.

18 The number of hours SJPOA applied to its “lodestar” calculation is fully
 19 documented by detailed time entries, prepared from contemporaneous records kept
 20 in the regular course of business. Martinez Decl. ¶¶ 11-12. Those records were
 21 reviewed by Gregg Adam, as the supervising attorney, with the exercise of billing
 22 judgment (i.e., hours billed to the client were reduced for inefficiencies, etc.).
 23 Adam Decl. ¶ 15. Additionally, SJPOA is not seeking recovery of all hours billed
 24 to the client in the case. Consequently, the “lodestar” figure includes significantly
 25 fewer hours than were spent litigating this case. *Id.* and Martinez Decl. ¶¶ 13-17.

26 **B. The Applicable Hourly Rates Are Reasonable**

27 Reasonable hourly rates for attorneys are determined based on
 28 “prevailing market rates.” *PLCM Group Inc.*, 22 Cal.4th at 1097. Courts consider

factors such as “salaries, overhead, the costs of support personnel, and incidental expenses.” *Id.* Moreover, courts must consider the experience and expertise of the attorneys and the market rates for attorneys of comparable experience and expertise. *Serrano v. Unruh* (“*Serrano IV*”), 32 Cal.3d 621, 640-43 & n. 31 (1982).

SJPOA’s Carroll Burdick & McDonough attorneys have considerable experience and expertise with respect to federal and labor litigation like this. Martinez Decl. ¶¶ 2-4, 6-10; Adam Decl. ¶¶ 3-4, 6-7; West Decl. ¶¶ 3-6. They are also deeply familiar with the underlying facts, having represented Plaintiff SJPOA and been involved with the issues underlying this case from the outset. Martinez Decl. ¶¶ 9-10; Adam Decl. ¶¶ 6-12; West Decl. ¶¶ 5-8. Yet, despite the attorneys’ wealth of experience and expertise, SJPOA used hourly rates to calculate the “lodestar” that are at, or below, currently prevailing market rates for comparably skilled Bay Area attorneys. While rates in the Bay Area are seldom below the level of \$450 per hour, that is all SJPOA seeks, which is quite low for a recognized leading practitioner in this area of law. Associate rates of \$350 are also at or below the market rate. Adam Decl. at ¶ 16.

The following chart sets forth the lodestar calculation through September 2012, for all time spent on this lawsuit for which an award of reasonable attorneys’ fees is sought:

	<i>Hours</i>	<i>Hourly Rate</i>	<i>Lodestar</i>
Partners	13.3	\$450	\$5,985.00
Associates	167.35	\$350	\$58,572.20
	180.65	TOTAL:	\$64,557.50

See Martinez Decl. ¶¶ 12-17 & Ex. A.

C. SJPOA Is Entitled to Fees on Fees

SJPOA is also entitled to recover its attorney fees in bringing this motion. See *Los Angeles Police Protective League*, 188 Cal.App.3d at 14 (“[t]o the League’s costs must be added the cost of trying and appealing its attorney fee

1 request”); *Ketchum*, 24 Cal.4th at 1133 (“absent circumstances rendering the award
2 unjust, an attorney fee award should ordinarily include compensation for *all* the
3 hours *reasonably spent*, including those relating solely to the fee”) (emphasis
4 original). As it is currently impossible for SJPOA to provide an accurate
5 calculation of fees incurred in pursuing this motion, SJPOA will provide a detailed
6 calculation of such with its reply papers. Martinez Decl. ¶ 17.

7 **V. CONCLUSION**

8 For all these reasons, this Court should grant SJPOA its reasonable
9 attorney fees incurred to defend against the City’s action.

10 Dated: March 11, 2013

11 CARROLL, BURDICK & McDONOUGH
12 LLP

13 By / s / Gregg McLean Adam
14 Gregg McLean Adam
15 Attorneys for Defendant
16 San Jose Police Officers’ Association
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